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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1949

No. 844

LOEW'S INCORPORATED,
Appellant,
against
UNITED STATES OF AMERICA,
Appellee,
and
WARNER BROS. PICTURES, INC., *et al.*,
Defendants.

PETITION FOR REHEARING

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Petitioner, Loew's Incorporated, prays that this Court grant re-hearing of its order entered June 5, 1950, which affirmed on its own motion, without hearing or without briefs, a judgment of the District Court, and petitioner further prays that this Court grant opportunity for oral hearing and filing of briefs before disposing of this appeal.

Reasons for Granting Rehearing

This Court has summarily affirmed a judgment of the District Court which decreed that petitioner can no longer both produce and exhibit motion pictures, a business in which petitioner has been engaged for over 30 years.

The District Court entered the decree dissolving this long-standing enterprise purportedly in compliance with principles for the legality of vertical integration set forth in the opinion of this Court on a prior appeal (334 U. S. 131). Loew's does not question the soundness of these principles and it was not the purpose of this appeal nor is it the purpose of this application for rehearing so to do.

Moreover, petitioner fully recognizes the necessity of the Court's sifting frivolous from meritorious appeals and, more

particularly, of disposing summarily of many cases which are adequately governed by principles of law set forth in prior decisions of the Court. This case, however, stands on a wholly different footing.

The substance of the present appeal, apart from the important questions of law noted in petitioner's Jurisdictional Statement, is that the evidence, both before and after the remand, is wholly insufficient under the tests laid down by this Court, to warrant either the dissolution of this company or the perpetual prohibition against its engaging in production and exhibition of pictures, and, more particularly, that the new findings upon which the District Court purportedly based this far-reaching decree are utterly without support in the record as far as Loew's is concerned.

These matters presented on this appeal, going to the very heart of this serious litigation, were not and could not have been before this Court on the prior appeal. Indeed this Court was careful to point out when the case was sent back to the District Court:

> "What findings would be warranted after such an inquiry in the present cases, we do not know." (334 U. S. at 172)
>
> "These matters were not considered by the District Court. For that reason, as well as the others we have mentioned, the findings on monopoly and divestiture which we have discussed in this part of the opinion will be set aside. * * * it is necessary to set aside the findings on divestiture so that a new start on this phase of the cases may be made on their remand." (334 U. S. at 174)
>
> "* * * the District Court should be allowed to make an entirely fresh start on the whole of the problem." (334 U. S. at 175)

It is obvious from the foregoing that this Court did not send the case back merely for a ministerial act on the part of the District Court. On the contrary it directed a thorough consideration of the merits. As a consequence, Loew's sub-

mitted substantial and decisive new evidence demonstrating that its integration has not led, and cannot have, any exclusionary effect on competitors in the exhibition and distribution of motion pictures.

While the District Court has ruled against the petitioner in this regard, on these entirely new and all important points Loew's has had no appeal to this or any other Court. Moreover, under the Expediting Act the present appeal is Loew's only appellate remedy.

Where a decree such as this strikes down a business of making and showing pictures, jeopardizing the livelihoods and investments of thousands, this Court in good conscience should not dispose of the appeal on its own motion, without oral argument, without briefs or without adequate opportunity itself to examine this new record.

At this time the motion picture industry is in a recognized decline. The number of pictures which producers are permitted to release in foreign territories is severely restricted. The rental for the films can only be withdrawn from those territories on a very limited basis, thus greatly reducing the possible revenue for every picture and in turn limiting the amount available for new productions. Complete and permanent dissolution of Loew's as a producing-exhibiting unit, which has here been decreed, will definitely compel a material curtailment in making the superior quality motion pictures for which this company has become world-famous over the years.

The District Court's decision that Loew's must separate its production-distribution activity from exhibition was based for the most part upon its new findings after remand that "the theatre holdings of the major defendants have played a vital part in effecting violations of the Sherman Anti-Trust Act" and "were a means of carrying out the restraints and conspiracies" (New Finds. 43, a and 147, b).

These findings, which were made without any new evidence to support them, are directly contrary to the finding of fact after the first trial that "the illegalities and restraints

[illegible] [illegible] [illegible] [

[illegible]

[illegible]

[illegible]

No. 844, October Term, 1949. LOEW'S, INC. *v.* UNITED STATES;

No. 845, October Term, 1949. WARNER BROS. PICTURES, INC. ET AL. *v.* UNITED STATES;

No. 846, October Term, 1949. TWENTIETH CENTURY-FOX FILM CORP. ET AL. *v.* UNITED STATES; and

No. 847, October Term, 1949. UNITED STATES *v.* LOEW'S, INC. ET AL. The order of this Court entered in these cases on June 5, 1950, is amended to read as follows:

"*Per Curiam:* The judgment is affirmed. MR. JUSTICE REED and MR. JUSTICE BURTON are of the opinion that probable jurisdiction should be noted and the cases set down for argument. MR. JUSTICE JACKSON and MR. JUSTICE CLARK took no part in the consideration or decision of these cases."

[The order is reported as amended in the bound volume of 339 U. S. at p. 974.]